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LORD ERSKINE.\*

England has produced in the course of her judicial history many great lawyers. But I suppose among the greatest of them all, not perhaps the greatest, but among the greatest, was Lord Eldon. To-day, however, I am to ask your attention to the qualities, characteristics and labors of Lord Erskine, who, unlike Eldon, was not in the highest sense, or the usual sense, a profound lawyer, but, on the other hand, was probably the greatest forensic advocate that has ever appeared at the English bar, whether before or since his day. At the same time we have the testimony of Romilly, his contemporary, and a past master in the field of equity jurisprudence, that such was the native force of his mind, such his quickness and power of application, that he could readily comprehend the most complex questions of law requiring his attention. That is, though unfamiliar at the moment with the principles involved in such questions, yet when the emergency arose his genius easily mastered them. Or, perhaps, I might say that while he carried about with him plenty of small change, yet when guineas were called for he had to search for them.

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\* The following paper was the substance of a lecture recently delivered at the Law School of the University of Pennsylvania by Mr. Henry Flanders and published in the LAW REVIEW by his kind permission.

Eldon, to use Mr. Lincoln's phrase, sprung from the plain people, and could not, or did not, care to trace his ancestry further back than to his grandfather. Erskine, on the contrary, was the son of an Earl, and his lineage was as old, so to speak, as the rocks of the Highland hills; so old, indeed, that its origin was lost in its antiquity.

Erskine was born in 1750; Eldon, a year later, in 1751. Eldon's father was a prosperous business man and was thus enabled to give his son an Oxford education. The Earl of Buchan's estate, on the contrary, had been so wasted and incumbered under the management of successive earls, or so impaired by the troubles of former and recent times, by war and domestic faction, that it had passed into the hands of sequestrators, to be administered according to Scotch law, for the benefit of creditors, allowing meanwhile, out of the income, a certain support to the debtor's family.

Under this arrangement Erskine's father had been compelled to abandon the hereditary castle of his ancestors, and take lodgings in an upper flat in a sixteen-story house in an ancient street of old Edinboro', where, in an ill-furnished room, Thomas Erskine was born. His father was so impoverished that he was reduced to an income of £200 per annum.

As his son grew up his mother, who was a daughter of Baron Stewart, and who is described as "a woman of much capacity, cultivation and piety," taught him to read, and also carefully taught him the catechism of the Presbyterian faith, a faith which was hereditary in his family, and which made a deep impression upon his character, altho' it cannot be said he was ever a particularly devout man.

Later on, as a boy, he was for a short time a pupil of Mr. Buchanan, who was a well-known Scotch scholar, and subsequently became a professor in the University of Glasgow.

But the circumstances of the family were so depressed, that his Father gave up his flat in Edinboro' and removed

to St. Andrews, where rents and other expenses were less and where his son continued his studies at the Grammar School, acquiring a moderate amount of Latin and reading, in a desultory way, a good deal of English literature.

He, also, for a time attended classes at the university in mathematics and natural history, but to send him regularly to the university was impossible; the meagre income of his Father being inadequate to the expenditure. It was, therefore, determined in the family councils to place him in the Navy. A commission as midshipman was obtained for him, and at the age of 13, with his blue jacket, cocked hat, and sword, the uniform of a "Middy," he was put on board the Tartar man of war, commanded by Sir David Lindsay, a nephew of Lord Mansfield, and he never saw the land of his birth again, until a half century had passed, nor until through many trials and tribulations, by the force of his unaided genius, he had triumphed over all adverse circumstances, had been Lord Chancellor, a Peer of the British Empire, and the pride and boast of the British bar.

He remained on board the Tartar four years cruising in the waters of the West India Islands, and along the American Coasts. During this period of naval service, he eagerly read such books as he found on board, and particularly gave much attention to botany and drawing. He saw, too, a good deal of slavery as it then existed in the British Islands; he witnessed the negroes dancing by night, and listened to their songs by day, and was so impressed by their apparent happiness that afterwards, when he became a Member of Parliament, he was sceptical about the wisdom of abolishing the slave trade; thinking, from his boyish recollections, that the careless, jovial, mirthful, pleasure loving, and thought free black man, was likely to be happier in a state of servitude than in a state of freedom. And yet Erskine was a humane man, and the first among British legislators, I think, to introduce into Parliament a bill to protect dumb animals from cruelty. Moreover, in later life his earlier views on slavery were much modified.

In his last year of sea service, he was promoted to the rank of Acting-Lieutenant, and when he returned to England, at the age of seventeen, he expected to be commissioned a full Lieutenant. But many midshipmen, older than himself and longer in the service were clamoring for promotion and his application was indefinitely postponed. Having been an Acting-Lieutenant, and never underestimating his value in the world, he scorned to serve under a "Middy" promoted over his head. Accordingly he resigned his commission, and turned his attention to the Army.

His Father dying at this time, left him a small pittance, and with it he bought an Ensign's commission in the Duke of Argyle's Regiment, "the Royals". He thus ceased to be a sailor, and at the age of 18, put on the uniform of a soldier. His regiment was quartered for the next two years in various towns of England where, we are told, he read much, flirted a good deal with the girls he met, and finally when he was twenty married one of them, a girl without birth or fortune, as one of his biographers remarks. But her Father, nevertheless, was a Member of Parliament, and strenuously objected to the match. And for the reason, in the language of the Stock Exchange, that his proposed son-in-law, while long on birth, was particularly short on money. The marriage, however, was a very happy one. She was a most excellent wife, and a most excellent mother to his children.

Having, however, no other income than an Ensign's meagre pay, this adventurous couple, receiving no help from his or her family, had, at times, a severe struggle to keep the wolf from the door. They lived together, 35 years, in poverty at the outset, but in the splendor of wealth and fame afterwards; and altho' no memoirs of the time, and no biographer of Lord Erskine, so far as I know, make mention of his wife in marble halls, or in the assemblies of the great and noble, which he frequented (owing doubtless to her domestic cares, and a distaste for society which those cares perhaps engendered), yet, I doubt not, when she

departed this life, she received on the other shore, a welcoming plaudit into that Eternal City not made with hands.

At the expiration of two years his Regiment was ordered to Minorca, and Erskine spent the next two years in that Island. Having a good deal of leisure on his hands, he devoted it to a study of English literature. He became saturated with Shakespeare, Milton, Dryden, and Pope. Their writings enriched his understanding, improved his taste, and fired his imagination. He could repeat, it is said, off-hand all the speeches in *Paradise Lost*.

The Chaplain of the Regiment being left at home on account of ill-health, it was greatly to his credit, I think, considering his youth, that Erskine was appointed to the position of Acting-Chaplain. Finding that the soldiers, who were mostly Presbyterians, as he was himself, did not much like the service according to the ritual of the Church of England, particularly objecting to prayers read out of a book, he made no difficulty in favoring them with extemporeaneous prayers. He composed sermons also, and delivered them with great unction. He was extremely popular as a preacher; his first sermon tho' was so uncommonly good that his superior officers suspected he must have stolen it; but all his sermons were so eloquent and edifying that they soon effectually dispelled the invidious suspicion.

The regiment returned to England in 1772 and the next year he became a Lieutenant. At the Assize town where the Regiment was quartered Lord Mansfield was holding Court. Erskine went to the sessions, and Lord Mansfield observing him inquired who he was and being informed he was the son of the late Earl of Buchan invited him to sit on the bench beside him. He heard a case tried, and was told that each one of the respective advocates was making an income greater than the combined pay of all the officers of his Regiment. Erskine, who was conscious of his powers, and had a good share besides of the vanity of his eldest brother, the present Earl, who once observed that in his time there were

only three great men in the world, himself, Frederick the Great and George Washington; so, on this occasion, Erskine declared after hearing these learned and eminent counsel, that he could make a better speech than any one of them. And the thought flashed upon his mind that he would again change his profession and study for the bar. Lord Mansfield encouraged the suggestion, and Erskine acted promptly. He sold his commission as Lieutenant, which gave him the cash he needed, and at once set about his preparations for that career which he so greatly adorned.

The nominal term of study for the bar, at that time, was five years, but two years were deducted in his case by obtaining a degree at Cambridge, which he did by matriculating there as a gentleman commoner, and residing there at intervals but without any prescribed study, and without examination; noblemen's sons being exempted therefrom. It is said, however, that when at Cambridge, he diligently read English, and wrote with equal diligence.

Meanwhile, he applied himself with earnestness to the study of the Law; first under Buller and then under Wood, both eminent barristers, and both, subsequently, created Judges. He mastered Buller's *Nisi Prius*, the *Term Reports*, the forms of pleading, and became an expert in the *Law of Evidence*. He was also a constant attendant at debating societies, and took a conspicuous part in their discussions. He was called to the bar in July, 1778. He had received from a relative, about this time, a legacy of £300, but nearly the whole sum was swallowed up by the heavy fees attendant on his entrance into the profession. He was very poor, and frequently felt poverty's bitter stings. He occupied obscure lodgings at Kentish Town in the neighborhood of London, dressed shabbily, and lived mostly, as he was afterwards accustomed to tell his friends, on cowheel and tripe.

He had, however, many acquaintances among men of rank, and among men distinguished for talent; but he seems

to have known few, if any, attorneys or any others, who could introduce him into business. His outlook was most gloomy. And yet an accident changed the scene, as if by magic. One day Erskine went out for a walk, and was caught in a severe rain storm. He sought refuge at the house of Welbore Ellis, a well-known figure of the time, a younger son of the Bishop of Meath, and who Macauley tells us was an "ancient placeman who had been drawing salary almost every quarter since the days of Henry Pelham," the first Earl of Chichester.

Mr. Ellis on this occasion, was entertaining a number of friends at dinner, but a seat at the table was readily found for Erskine. Among the guests, tho' unknown to Erskine, was Captain Baillie a naval officer of great merit, who had been appointed in recognition of his services Lieutenant Governor of Greenwich Hospital. He soon found that gross abuses existed in that institution, by reason of which those who ought to receive its benefits were shamelessly defrauded of them. Among these abuses was, that Lord Sandwich, First Lord of the Admiralty, had placed in the Hospital a large number of landsmen for election purposes, namely, to enable them to vote in that precinct or division to the great inconvenience and annoyance of the seamen for whose good or advantage the Hospital was established. Capt. Baillie, who was not a politician, felt outraged at this perversion of the uses of the Hospital, and he applied to the Board of Directors, praying for redress. No attention being paid to him, he printed and circulated a statement of the case. Those whom he implicated in the wrongdoing applied for a rule to show cause why a criminal information should not be filed against him.

This rule was still pending, and the subject being referred to in the course of the dinner, Erskine denounced the conduct of Lord Sandwich in most vigorous terms. Struck by the force and precision of his language and the vivacity of his manner, Baillie enquired who the young gentleman was, and being told that he had at one time been

connected with the Navy, but was now a lawyer, the next day he sent him a retainer. This retainer was a God-send to Erskine, and started him, at once, into fame and fortune. Baillie had four other counsel, and as the case involved a question of politics, it aroused public attention, and the government was anxious to get rid of it without a public discussion in court. They proposed a compromise. Baillie's counsel met for consultation. Three of his seniors were in favor of accepting the government's proposal. But Erskine objected: "My advice gentlemen," said he, "may savor more of my late profession than my present one, but I am against compromising." Whereupon Baillie exclaimed "I'll be d—d if I compromise," and throwing his arms around Erskine said, "You are the man for me."

When the case came on for hearing, the court was crowded with an eager, expectant, and distinguished audience. Lord Mansfield presided. Erskine's colleagues, who were men of eminence at the bar, consumed the day. The next day, the Solicitor-General, not thinking that a stripling like Erskine was of any consequence, or was to take any part in the argument, rose to reply on behalf of the government. Thereupon Erskine instantly came forward and thus addressed the court:—[Mr. Flanders here quoted a large part of Erskine's speech.—Editor.]

The effect of this speech was most extraordinary. It has rarely been equalled in the annals of the bar, whether of ancient or modern times. Jekyll, who was a wit and politician, and a nephew of that Sir Joseph Jekyll whom Pope described as "an old whig who never changed his principles or his wig," came into court while Erskine was speaking, and found he says, the court, Judges and all "in a trance of amazement."

Erskine rose on the morning of that eventful day with his sky overcast, and while speaking felt, as he has told us, his children plucking at his gown, and crying, "Now is the time Father, to get us bread," and before the sun went

down he had won not only bread but fame and fortune as well. The Attorneys gathered about him, and literally thrust briefs and retainers into his hands. He now entered upon a career unique and unsurpassed in the history of the British bar, both for the number of cases he tried, and the amount of fees he received. In the twenty-seven years of his practice, before he became Lord Chancellor, he never missed a day in court, and the total of his fees during that period was £150,000.

Three years after his admission to the bar his income reached £10,000; sixteen hundred guineas more, says Hamilton, one of his biographers, than had ever been made in a year, by any British barrister before. Meanwhile, he had discharged all his debts and saved besides about £9000. Yet during his whole life he was careless of money, perhaps negligently so, and the love of it he denounced. To bow down, he said, "to a pestiferous lump of gold is the degradation of human nature; the lowest point of its depression." His practice was very various. The growth of commerce, prior to and after his admission to the bar, owing to the long period of hostilities between England and France, produced an immense increase of commercial and maritime litigation. This was the period when Lord Mansfield with his extensive knowledge of the Civil Law, was ameliorating and moulding the common law into a more flexible and adaptable system. Erskine at the bar shared in these labors, and for twenty years he was employed in nearly all the commercial causes tried in the King's Bench.

In cases where blood was concerned, in treason cases, for instance, he was well-nigh irresistible, as he was, also, in libel cases. His speeches deserve the attention and study of every student of the law. Their eloquence and close logic will improve his understanding and elevate the tone of his heart.

Erskine had great personal attractions, which added a charm to his advocacy, and secured the sympathy of Juries,

Judges, and spectators. In person he was erect and graceful. His eyes were brilliant and captivating, as was his whole appearance. His voice was clear and resonant without a trace of the Scotch accent; a voice that at once arrested attention and held it. His vivacity, his unflagging spirits, his animation, showing the vital spark aglow in every feature, his uniform courtesy both to high and low, his amiability, and good humor won the good will of everybody.

Add to these physical qualities, an original and powerful intellect, incisive logic, brilliant imagination, that creative power which illuminates whatever it touches, together with the power of eloquent expression, and you have a combination that fascinates and dominates the human mind.

In 1778 an indecisive sea-fight took place between the English and French fleets off Ushant on the French coast, and the French fleet escaped. Lord Keppel who commanded the English ships was charged with incapacity and mismanagement in the conduct of the battle. He was brought to trial before a court-martial at Portsmouth. There was a general apprehension in the public mind that the trial might result as the trial of Admiral Byng had resulted, in the conviction and execution of Lord Keppel. Great excitement prevailed, and the attention of all England was concentrated upon the event. Lord Keppel had secured Dunning, afterwards Lord Ashburton, and Lee, afterwards Lord Ellenborough, both barristers of great distinction, to conduct his defence. But Dunning had been present at the argument in Captain Baillie's case, and such was the impression made upon him, and the bar generally by Erskine's speech on that occasion, that Dunning and Lee united in recommending Lord Keppel to retain Erskine, and let them remain simply as advisers for the defence.

Erskine was retained, and conducted the case with consummate ability and tact. He wrote the speech delivered by Lord Keppel; counsel not being allowed to address a

court martial. The trial lasted thirteen days and ended with a triumphant acquittal. The next day the Admiral sent Erskine a cheque for £1000. With that lightheartedness which rarely deserted him he rushed off to his friends, the family of the Painter Reynolds, and exhibiting his cheque exclaimed, "*Voila!* this is a non-suit to cow-beef."

The next case to which I shall call your attention was the prosecution of Lord George Gordon for High Treason. Parliament had recently passed a bill ameliorating and modifying the penal code against the Catholics. This bill caused great excitement and aroused great opposition, particularly in Scotland. Lord George Gordon was a religious enthusiast, perhaps a fanatic, as well as President of the Protestant Association. And at the head of forty thousand men he proceeded through the streets of London to the House of Commons to present a Petition for a repeal of the obnoxious enactment. The appearance of such a body of men in London, aroused the passions of the discontented, and criminal classes of every description, who seized the occasion to mob, loot, and in many instances, to burn houses, as well as to terrorize the city, irrespective of the religious sentiments of the inhabitants, whether Protestant or Catholic. For several days universal panic prevailed. The military seemed paralyzed; nobody being willing to take the responsibility of giving the order to fire on the rioters. It was at last given by the King himself, and the mad tumult was suppressed.

The Government now determined to make a sacrifice of Lord George Gordon, as an example, and as a precedent for future times, altho' he had done all in his power to quell the rising and to prevent the destruction of life and property. He was at once committed to the Tower and indicted for High Treason.

He was tried before a Jury at the King's Bench, Lord Mansfield and his brethren presiding. Kenyon, afterwards Lord Chief Justice of England, and the successor of Lord Mansfield in that high office, was associated with Erskine

for the defense. He was a good common law and equity lawyer, but as Lord Campbell tells us, he "had no talent for public speaking, and was entirely void of constitutional learning." His speech, as Lord Campbell further tells us, was a very honest, but very inefficient one, and when he sat down the friends of Lord George were in an agony of apprehension.

But Erskine was yet to speak. He rose a little after midnight. And, says Lord Campbell, he "not only instantly dispelled all feeling of exhaustion and lassitude from the minds of the Jury, the Judges, and the bystanders, but, while he spoke, they all seemed to be inspired with a new ethereal existence, and they listened as if addressed by some pure intelligence of heaven, who had appeared to instruct them."

That speech sounded the death knell of constructive treason in the law of England. Time would not allow me to quote even in outline, his closely reasoned argument upon that point. You should read it in the collective volumes of his published works. But I must read to you one or two paragraphs that destroyed in the minds of the Jury, and perhaps, in the mind of Lord Mansfield also, impressions that were calculated to bear unfavorably against the prisoner.

During the height of the riotous frenzy, the mob burned the house of Lord Mansfield, with all its priceless possessions. Observe now the delicacy and tact with which he smoothed the crest of Lord Mansfield, in alluding to this unhappy circumstance.

"Can any man living," he said, "believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate who had always been the friend of the Protestant dissenters against the ill-timed jealousies of the establishment;—his country-

man, too; and, without adverting to the partiality not unjustly imputed to the men of that country, a man of whom any country might be proud?—No, gentlemen, it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner), could possibly consent to this burning of the house of Lord Mansfield."

Having discussed the evidence, he thus proceeded:—  
\* \* \* "What, then, has produced this trial for high treason? What! but the inversion of all justice, by judging from consequences, instead of from causes and designs? What! but the artful manner in which the Crown has endeavored to blend the petitioners in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed—crimes which the shameless indolence of our magistrates, which the total extinction of all police and all government suffered to be committed in broad day, in the delirium of drunkenness, by an unarmed banditti, without a head, without plan or object, and without a refuge from the instant gripe of justice; a banditti, with whom the Associated Protestants and their President had no manner of connection, and whose cause they overturned, dishonored, and ruined? How unchristian, then, is it to attempt, without evidence, to infect your imaginations, who are upon your oaths dispassionately and disinterestedly to try the offense of assembling a multitude to petition for the repeal of a law, by blending it with the subsequent catastrophe, on which every man's mind may be supposed to retain some degree of irritation! Oh fie! oh fie! it is taking advantage of all the infirmities of our nature. Do they wish you, while you are listening to the evidence, to connect it with the consequences in spite of reason and truth, to hang the millstone of prejudice round his innocent neck to sink him? If there be such men, may God forgive them for the attempt, and inspire you with fortitude and wisdom to do your duty to your fellow citizens with calm, steady, reflecting minds."

It was thought that Lord Mansfield's charge bore somewhat heavily against the prisoner, but nothing could withstand the effect of Erskine's speech, and the Jury acquitted him.

In cases of criminal libel, the law of England as defined by the courts, had long been held to be that the function of the Jury was strictly confined to the fact of publication; whether the publication in point of intention and law was libellous, belonged wholly to the judges. Erskine on the contrary always maintained, with great courage and pertinacity, that the question of libel or no libel, in all its aspects, was for the Jury and not for the Judge.

Later on Parliament adopted Erskine's view, and Mr. Fox's bill gave to the Jury the right to determine not only the question of publication, but whether the matter published was libellous. In this state of the law, I mean the state of the law before the passage of Fox's bill, the famous case of Stockdale came on for trial. I will briefly summarize the facts:—Mr. Logan, a minister of the Church of Scotland, wrote a pamphlet in defense of Warren Hastings who had been impeached by the House of Commons, and whose trial was then pending before the House of Lords.

This pamphlet contained severe and as was thought offensive animadversions upon the House of Commons for their arraignment of Hastings. Stockdale, a respectable printer and bookseller of London, published it. Thereupon, at the instance of the House of Commons, the Attorney General filed a criminal information against him.

He retained Erskine for his defense. Lord Campbell declares that his address to the Jury in this case was "the finest speech ever made at the English Bar." The great orator did not deny that Hastings had been cruel in maintaining British ascendancy in India, but the crime was not his; it was the crime of the British Government which had conquered that unhappy country in violation of the laws of

God and nature, and could not maintain its conquest without a system of cruelty and terror. Let me read an extract from this memorable speech :

“If your dependencies have been secured, and their interests promoted, I am driven in defense of my client to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both;—he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it; he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, and insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, nor support from any one principle that cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by knavery and the strength of civilization, still occasionally start up in all the vigor of intelligence and of insulted nature;—to be governed at all, they must be governed with a rod of iron; and our Empire in the East would have been long since lost to Great Britain, if civil and military prowess had not united their efforts to support an authority which Heaven never gave—by means which it can never sanction.

“Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of

them myself, among reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage in the indignant character of a Prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks as the notes of his unlettered eloquence. 'Who is it', said the jealous ruler, over the desert encroached upon by the restless foot of English adventurers, 'who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us; and by this title we will defend it,' said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated men all round the globe; and depend upon it, nothing but fear will control where it is vain to look for affection."

Lord Campbell in commenting upon this speech says:— "I have been told by my father-in-law, the late Lord Abinger, who was present in court when the speech was delivered, that the effect upon the audience was wholly unexampled; they all actually believed that they saw before them the Indian Chief with his bundle of sticks and his tomahawk;—their breasts thrilled with the notes of his unlettered eloquence—and they thought they heard him raise the war-sound of his nation. When we now in our closets read the speech with enthusiasm, what must, indeed, have been the feelings of those on whom its impression was aided by the voice, the eye, the action of the speaker?"

Time will not permit me to recount further the unexampled triumphs of Erskine in the field of his profession. I can only, in the few minutes now left me, ask your attention to a few words with respect to his political career. He was

a Whig, and after being at the bar five years the Whigs brought him into the House of Commons. Great expectations were cherished with regard to his efforts on this high and commanding scene. He would, his party believed, be an overmatch for Pitt, the boast and sheet-anchor of the Tories.

Erskine was now thirty-three; Pitt twenty-four, and at that age already Prime Minister. Pitt was proud, haughty, disdainful and sarcastic. He would scarcely notice his own followers; men of ancient names and hereditary fortunes. Erskine's failure was as dismal in the House of Commons as it was triumphant in Westminster Hall. Creevy an old Parliamentarian, a Whig and a friend of Erskine, describes the first debate in which he took part:

“Lord Hawkesbury began,” he says, “and made a very elaborate speech of two hours. \* \* \* Erskine followed in the most confused, unintelligible, inefficient performance that ever came from the mouth of man. Then came the great fiend himself—Pitt—who, in the elevation of his tone of mind and composition, in the infinite energy of his style, the miraculous perspicuity and fluency of his periods outdid (as it was thought), all former performances of his.”

Later in the session, Erskine made another speech, and, says Creevy, “Bad—miserable as I have heard Erskine in the House of Commons, never was he so execrable as on this occasion.”

This phenomenal failure, psychology alone, perhaps, can explain. It was a state of mind. Sheridan, who feared nobody, said, on one occasion, to Erskine, “You are afraid of Pitt, and that is the flabby part of your character.” And the Duke of Wellington said, that “Pitt exercised an ascendancy of terror” over him. “He was awed like a schoolboy at school.”

Poor as was the figure made by Erskine in Parliament, nevertheless, when the Whigs after long exclusion from

office, came into power in 1806 he was created Lord Chancellor, thus displacing Eldon from the Cabinet, and taking his seat also on the Woolsack. It was a surprise to the Bar as well as to the public. For Erskine knew nothing of Equity; nothing even of its forms. Besides, he had been accustomed to speak contemptuously of that tribunal. "Who," he once said, "would send a dog he loved into such a court?" Romilly, altho' conceding Erskine's power of mind, declared he was totally unfit for the office of Lord Chancellor. Yet such was his genius, his quickness, his power of attention and application when necessary, that he made few blunders.

But his tenure of office was brief. He was created Lord Chancellor on the seventh of February, 1806, and the King, doubtless by reason of Eldon's intrigues, dismissed his Whig ministry, including the Chancellor, on April 1, 1807. Thus Erskine held the Great Seal but little more than a year; retiring on a life pension of £4000 per annum.

He was now 57 years old. His life thus far had been a strenuous and famous one. Literally, with the exception of his political episode, he had, during the passing years, trod the paths of glory. He could not return to the bar, and his resources now, against the advances of age, were mainly literature and society. He was fond of both, and was the charm and delight of every circle he honored with his presence. His friends, however, complained that, at times, he rather bored them by recounting his triumphs at the bar, and by his glorification of trial by Jury; in this, resembling Dryden's hero, in "The Feast of Alexander."

"The King grew vain,  
Fought all his battles o'er again;  
And thrice he routed all his foes,"  
And thrice he slew the slain."

Byron in his diary says: "Dined last night at Lord Holland's; sat by Erskine. He was delightful, but D—m Trial by Jury."

Later on his days were not prosperous. At times he sunk into the unwholesome life of the idle man about town. Anticipating a Revolution in England, he had invested large sums in the United States, which were a total loss. He met with other losses, and notwithstanding his pension, fell into pecuniary straits. At times, too, he grew melancholy. Walter Scott, who was an inveterate as well as an intemperate Tory, and hated his famous countryman, Erskine, as being an equally inveterate Whig, writes, about this time, in his diary that "Tom Erskine is stark mad." This, however, was the exaggeration of a writer of fiction.

In the autumn of 1823 Erskine determined to go by sea to Scotland and spend the winter with his brother, the Earl of Buchan. In a storm on the voyage, during which he persistently remained on deck, he was attacked with inflammation of the chest. He became seriously ill and was put ashore at Scarborough, and at the not far distant inland residence of his sister-in-law, the widow of his brother Henry, he died on the seventeenth day of November, 1823, in the 73d year of his age. And the ashes of this illustrious man, now repose in the county of Linlithgow, in a remote and obscure Parish of his native land.

The profession, however, have erected a statue to his memory, by Westmacott, in Lincoln's Inn Hall; his portrait, by Lawrence, hangs upon the walls of Windsor Castle; his bust was long affectionately preserved at Holland House; and the glory of his life is still cherished wherever English law and English eloquence are known and honored.

*Henry Flanders.*